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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,792	09/29/2003	Giles Newcombe	31311.107	2240

7590 11/29/2004

Paul F. Wille
6407 East Clinton St.
Scottsdale, AZ 85254

EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/675,792		NEWCOMBE ET AL.	
	Examiner		Art Unit	
	Gregory J. Strimbu		3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/22/03</u> . | 6) <input type="checkbox"/> Other: ____ |

Claim Rejections - 35 USC § 112

Claims 3-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "like" on line 2 of claim 3 render the claims indefinite because they are relative terms whose meaning cannot be ascertained by one with ordinary skill in the art and is not defined in the specification. How much like a concertina body must a body be before it can be referred to as a concertina body?

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 4 recites the broad recitation of a resilient plastics material, and the claim also recites an elastomer which is the

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narrower statement of the range/limitation. Recitations such as "suitable" on line 2 of claim 5 are confusing since it is unclear what is deemed to be a suitable material.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Dettman. Dettman, in figure 3, discloses a fingerguard comprising a first mounting strip 18 for mounting on the support frame 40 along one side of a gap and a second mounting strip 18 for mounting on the leaf 44 along an opposite side of the gap, a cover strip 30 having a pair of spaced longitudinal edges 32, one of the longitudinal edges being secured to and along the first mounting strip and the other of the longitudinal edges being secured to and along the second mounting strip such that in use the cover strip extends across and prevents access into the gap, the cover strip including a sealing formation (not numbered, but comprising the generally straight portion of the seal adjacent to the edge 32) on its inner face opposed to the front face of the leaf, the sealing formation in use being held in sealing contact with the front face of the leaf so as to sealingly isolate the gap when the leaf is in its closed position.

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Claims 1, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Dettman. Dettman, in figure 4, discloses a fingerguard comprising a first mounting strip 50 for mounting on the support frame 58 along one side of a gap and a second mounting strip 50 for mounting on the leaf 54 along an opposite side of the gap, a cover strip 52 having a pair of spaced longitudinal edges (not numbered, but shown in figure 4), one of the longitudinal edges being secured to and along the first mounting strip and the other of the longitudinal edges being secured to and along the second mounting strip such that in use the cover strip extends across and prevents access into the gap, the cover strip including a sealing formation (not numbered, but comprising the corrugated surface) on its inner face opposed to the front face of the leaf, the sealing formation in use being held in sealing contact with the front face of the leaf so as to sealingly isolate the gap when the leaf is in its closed position, the sealing formation is defined by at least one sealing lip formed by the corrugated surface.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dettman as applied to claims 1, 2, 4, 5 and 8 above, and further in view of Albenda. Albenda, in figure 1, discloses a fingerguard comprising a concertina body 9.

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It would have been obvious to one of ordinary skill in the art to provide Dettman with a concertina body, as taught by Albenda, to increase the flexibility of the fingerguard.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dettman as applied to claims 1, 2, 4, 5 and 8 above, and further in view of Albenda. Albenda discloses a fingerguard 9 comprising mounting strips 6 and 7 which are formed with the body of the fingerguard 9.

It would have been obvious to one of ordinary skill in the art to manufacture the fingerguard of Dettman with integral components, as taught by Albenda, to increase the ease with which the fingerguard can be installed.

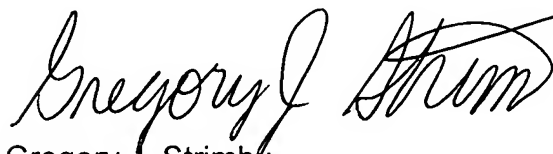
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shepherd, Hurd, Roby et al., Dorner et al., Sankey et al. and Lucas et al. are cited for disclosing a fingerguard.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal flourish extending to the right.

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
November 24, 2004